Industrial Disease Standards Panel

Comité des normes en matière de maladies professionnelles

FIRST REPORT TO THE WORKERS COMPENSATION BOARD ON CERTAIN ISSUES ARISING FROM THE REPORT OF THE ROYAL COMMISSION ON ASBESTOS

SEPTEMBER 1988

89-02227/

The Industrial Disease Standards Panel is a Schedule 1 Agency of the Government of Ontario attached to the Ministry of Labour. The function of the Panel, as defined in Section 86p of the Workers' Compensation Act of Ontario, is as follows:

(a) to investigate possible industrial diseases;

(b) to make findings as to whether a probable connection exists between a disease and an industrial process, trade or occupation in Ontario;

(c) to create, develop and revise criteria for the evaluation of claims respecting industrial diseases; and

(d) to advise on eligibility rules regarding compensation for claims respecting industrial diseases.

The Panel is required by statute to report its findings to the Workers' Compensation Board of Ontario.

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Industrial Disease Standards Panel

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Industrial Disease
Standards Panel

Comité des normes
en matière de maladies
professionnelles

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September 21, 1988

Dr. R. G. Elgie
Chairman
Workers' Compensation Board
2 Bloor Street East, 20th Floor
Toronto, Ontario
M4W 3C3

Dear Dr. Elgie:

I am pleased to convey herewith a Panel report on selected asbestos issues in accordance with Section 86p(10) of the Workers' Compensation Act.

Yours sincerely,

J. Stefan Dupré

J. Stefan Dupré
Chairman

JSD:dc

Ontario Ministry of Labour
Ministère du Travail de l'Ontario

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September 17, 1988

MEMORANDUM TO: WORKERS' COMPENSATION BOARD

FROM: INDUSTRIAL DISEASE STANDARDS PANEL

RE: **FIRST REPORT ON CERTAIN ISSUES ARISING FROM THE REPORT OF THE ROYAL COMMISSION ON ASBESTOS**

1.0 BACKGROUND

1.1 The Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario reported to the Lieutenant Governor in Council in April of 1984. A number of the Commission's recommendations are reflected in legislation passed since that time. Thus, for example, the amendments to the Workers' Compensation Act that make statutory provision for the composition and functions of this Panel had their genesis in the recommendations of the Royal Commission on Asbestos (RCA).

1.2 By letter dated March 5, 1987, the Workers' Compensation Board requested that the Panel provide advice on the disposition of selected issues encompassed by certain RCA recommendations. This letter is reproduced in Appendix A of the present Report.

1.3 After due deliberation, which included consultation with former RCA Commissioners J.S. Dupre and J.E. Mustard, the Panel decided that it should not restrict itself to the issues raised in the Board's letter. Instead, the Panel has embarked upon a comprehensive examination of all of the RCA recommendations which remain outstanding and fall within the Panel's statutory mandate. The management of this task has led the Panel to unbundle the numerous RCA recommendations which are involved into four categories.

1.4 First, there are recommendations that signal an ongoing role for this Panel, for example in monitoring the outreach efforts of the Workers' Compensation Board and the Ministry of Labour in identifying cases of compensable asbestos-related disease. Such a role is one whose conduct should occasion Panel reports on an "as needed" basis. Although a formal report on the subject is not planned at present, the Panel has received a presentation on Board and Ministry surveillance of asbestos-exposed workers from Dr. Elizabeth Kaegi, the Board's Vice President of Policy and Special

Services, and from Mr. Arthur Gladstone, Executive Director of the Ministry's Occupational Health and Safety Division.

1.5 Second, there are a number of RCA recommendations affecting the terms pursuant to which occupational diseases not related to asbestos exposure should be compensable. Given its terms of reference, the RCA could not compile an evidentiary base concerning the extent to which the compensation of such diseases should be encompassed by statutory presumptions, Board eligibility rules or both. Nor, to take another example, could the RCA express an opinion concerning what chronic, life-shortening diseases other than asbestosis should entail compensation for psychological as well as physical disability. The RCA did recommend, however, that such matters should be examined by a statutory body, namely this Panel. Various investigations which the Panel has under way or is about to launch will provide the appropriate evidentiary base for future Panel reports.

1.6 Third, there are certain issues which are specifically asbestos-related and were addressed by the RCA concerning which the Panel has deemed it advisable to seek further evidence. Notable among these are the implications for compensation of the relative incidence of mortality from cardiovascular or cerebrovascular disease among workers with a prior diagnosis of asbestos-related health effects. The Panel has commissioned Dr. W.J. Nicholson of the Mount Sinai School of Medicine in New York to study this matter as background for a future report.

1.7 The fourth set of issues encompasses various matters concerning which the Panel is satisfied that it has little or nothing to add to the voluminous evidentiary base compiled by the RCA in the course of its research programs and public hearings. The issues that are the subject of the present Panel report are all in this fourth category.

2.0 ISSUES

2.1 The issues addressed in this report are the following:

1. The scheduling of asbestosis and mesothelioma;

2. Benefits to the survivors of deceased individuals who suffered from asbestosis and were in receipt of partial disability awards for this condition;

3. Recognition of psychological as well as physical disability as a compensable condition among claimants suffering from asbestosis;

4. Organizational and structural reforms applicable to the processing of partial disability claims associated with asbestosis.

3.0 FINDINGS AND RECOMMENDATIONS

3.1 SCHEDULING OF ASBESTOSIS AND MESOTHELIOMA

3.1.1 Since 1914, the Workers' Compensation Act has provided a rebuttable presumption in favour of claimants whose disease and employment process are listed in a Schedule of the Act. This particular presumption is currently generated by Section 122(9) of the Act which states:

> If the worker at or before the date of the disablement was employed in any process mentioned in the second column of Schedule 3 and the disease contracted is the disease in the first column of the Schedule set out opposite to the description of the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved.

3.1.2 What Schedule 3 entails is a presumption as to the link between a stipulated disease and a stipulated process. Once the facts pertaining to the existence of the disease and the employment in the corresponding process have been established, a claimant is favoured by a presumption that the disease was due to the process. The Schedule 3 presumption is classified as rebuttable because an employer who chooses to challenge the presumption bears the burden of proving that the disease was not due to the employment.

3.1.3 With respect to asbestosis and mesothelioma, the RCA began by observing that neither disease was covered by the Schedule 3 generated by section 122(9). It then went on to conclude that these asbestos-related diseases should not only be scheduled, but that workers should be favoured by a higher class of presumption than that generated by Section 122(9). Having so concluded, the RCA recommended that the presumption in favour of a claimant suffering from these diseases and employed in an asbestos-related process should be irrebuttable.

3.1.4 A 1984 amendment to the Workers' Compensation Act created the statutory means of implementing this RCA recommendation. This amendment added a new Section 122(9a) which states:

> If the worker at or before the date of the disablement was employed in any process mentioned in the second column of Schedule 4 and the disease contracted is the disease in the first column of the Schedule set out opposite to the description of the process, the disease shall be conclusively deemed to have been due to the nature of the employment.

The new Schedule 4 that triggers this irrebuttable presumption awaits compilation.

3.1.5 Given the evidentiary base offered by the RCA report, the Panel deems it entirely appropriate that asbestosis and mesothelioma should be the first diseases to be stipulated in the disease column of Schedule 4. On its way to this conclusion, the Panel received a presentation from Dr. J. Corbett Macdonald, a senior figure among the internationally recognized contributors in the field of the epidemiology of asbestos-related health effects. Dr. Macdonald's presentation, which updated two days of sworn testimony he had given to the RCA in June of 1981, confirmed the continuing validity of RCA's findings concerning asbestosis and mesothelioma. With respect to the precise words that should be entered into the disease column of Schedule 4, the Panel considers that the RCA findings will be most clearly reflected if, in the case of mesothelioma, there is explicit reference to both pleural and peritoneal mesothelioma.

3.1.6 As for the wording of the process column of Schedule 4, the Panel is intent on ensuring that it capture the RCA's concern over asbestos exposures that arise not only in fixed-place industry, but in other than fixed-place industry. In this regard, the scope of the Regulation respecting Asbestos on Construction Projects and in Buildings and Repair Operations made under the Occupational Health and Safety Act (Ont. Reg. 654/85), which became effective on March 16, 1986, offers instructive guidance. This Regulation, whose companion is the earlier Ontario Regulation 570/82 that applies to the fixed-place processes of mining, manufacturing and assembling, embraces the non-fixed-place processes of construction, repair, alteration, maintenance and demolition.

3.1.7 In light of the above considerations, and noting the Board's authority, pursuant to Section 122(16) to compile and amend Schedules 3 and 4 subject to the approval of the Lieutenant Governor in Council, the Panel makes the following recommendations.

RECOMMENDATION 1: THE WORKERS' COMPENSATION BOARD SHOULD ACTIVATE SCHEDULE 4 OF THE WORKERS' COMPENSATION ACT BY ENTERING IN COLUMN 1 (THE DISEASE COLUMN) "ASBESTOSIS" AND IN COLUMN 2 (THE PROCESS COLUMN) "ANY MINING, MANUFACTURING, ASSEMBLING, CONSTRUCTION, REPAIR, ALTERATION, MAINTENANCE OR DEMOLITION PROCESS INVOLVING EXPOSURE TO ASBESTOS."

RECOMMENDATION 2: THE WORKERS' COMPENSATION BOARD SHOULD FURTHER ACTIVATE SCHEDULE 4 BY ENTERING IN COLUMN 1 (THE DISEASE COLUMN) "MESOTHELIOMA, PLEURAL AND PERITONEAL" AND IN COLUMN 2 (THE PROCESS COLUMN) "ANY MINING, MANUFACTURING, ASSEMBLING, CONSTRUCTION, REPAIR, ALTERATION, MAINTENANCE OR DEMOLITION PROCESS INVOLVING EXPOSURE TO ASBESTOS."

3.1.8 With respect to any individual claim, it must be clearly understood that the above recommendations do not preclude challenges concerning whether an individual in fact suffers from the scheduled disease, or was in fact exposed to asbestos in the scheduled process. What they do accomplish is simply and precisely what Section 122(9a) stipulates, namely the presumption, given the factual determinations pertinent to the entries in the disease and process columns, that "the disease shall be conclusively deemed to have been due to the nature of the employment."

3.2 SURVIVOR BENEFITS

3.2.1 Upon the death of an individual who suffered from asbestosis and received a partial disability award for this condition, there is no automatic entitlement to survivor benefits. As a general proposition, what must be determined is whether the death is attributable to the employment-related condition that was recognized by the partial disability award. The making of such determinations can sometimes pose a challenge as complex and controversial as any conceivable issue in workers' compensation.

3.2.2 The RCA explored numerous dimensions of this challenge, including some of its implications for appeals procedures and benefit of doubt policy. For the purpose of the present report, Panel's concern is confined to the RCA's most simple findings. The first of these was that although the testimony of Board officials indicated that survivor benefits were invariably allowed in certain clear-cut instances, no single eligibility rule stipulated this fact. The instances pinpointed by RCA were where the death resulted from asbestosis, mesothelioma, lung, laryngeal or gastro-intestinal cancer, or cor pulmonale.

3.2.3 The Panel has decided to reserve, for the time being its position with respect to cor pulmonale while it awaits the study of cardiovascular and cerebrovascular mortality cited earlier in this Report. For the rest, the Panel agrees with RCA that "there is a certain redundancy, given already existing Board guidelines" (RCA, p. 764) in naming the pinpointed causes of death in a single eligibility rule. It also agrees with RCA that such an eligibility rule would serve the vital purpose of clear communication. By way of making its own formal recommendation, the Panel advances the following:

RECOMMENDATION 3: THE WORKERS' COMPENSATION BOARD SHOULD PROMULGATE AN ELIGIBILITY RULE PURSUANT TO WHICH SURVIVORS OF DECEASED INDIVIDUALS WHO RECEIVED PARTIAL DISABILITY AWARDS FOR ASBESTOSIS SHALL BE ENTITLED TO BENEFITS IF DEATH RESULTED FROM ASBESTOSIS, MESOTHELIOMA, LUNG, LARYNGEAL OR GASTROINTESTINAL CANCER.

3.2.4 A second RCA finding pinpointed a need for standardized Board practices in the realm of communicating its rules to claimants. One of these recommendations (RCA 13.11, p. 769) addresses communication with claimants generally; its companion (RCA 13.12, pp. 769-770) addresses communication in the matter of survivor benefits specifically.

3.2.5 Here the Panel considers that it can most appropriately proceed by recommending that the Board respond to these two recommendations. This has the effect of triggering the statutory gazetting process applicable to all Panel recommendations, and obligates the Board to produce a published response.

RECOMMENDATION 4: THE WORKERS' COMPENSATION BOARD SHOULD RESPOND TO THE FOLLOWING RECOMMENDATIONS OF THE ROYAL COMMISSION ON ASBESTOS (THE NUMERALS IN PARENTHESES REFER TO THE NUMBER OF THE RCA REPORT ON WHICH THE RECOMMENDATION APPEARS).

1. "THE BOARD SHOULD ADOPT A STANDARDIZED FORM OF COMMUNICATION WITH CLAIMANTS WHICH ENSURES:

(I) THAT ALL CLAIMANTS FOR WHOM IT IS PERTINENT SHALL KNOW THAT THEY HAVE AN EXPLICIT RIGHT TO APPEAL AND ARE INFORMED OF THE PROCEDURES FOR LAUNCHING AN APPEAL; AND
(II) THAT ALL CLAIMANTS WHOSE DISEASE IS THE SUBJECT OF AN ELIGIBILITY RULE SHALL HAVE A COPY OF THE PERTINENT ELIGIBILITY RULE." (RCA 13.11, p. 769).

2. "THE WORKERS' COMPENSATION BOARD SHOULD ADOPT A STANDARDIZED PRACTICE WHEREBY:

(I) RECIPIENTS OF PARTIAL DISABILITY/IMPAIRMENT AWARDS ARE INFORMED OF THE RULES PURSUANT TO WHICH THEIR SURVIVORS MAY BE ELIGIBLE FOR BENEFITS IN THE EVENT OF DEATH; AND
(II) IN ALL INSTANCES WHERE THE BOARD HAS BEEN UNABLE TO GRANT SURVIVOR BENEFITS WITHIN ONE MONTH OF DEATH, THE CLAIMANT'S

SURVIVORS SHALL BE NOTIFIED THAT THE MATTER IS UNDER ADJUDICATION, PROVIDED WITH THE PERTINENT ELIGIBILITY RULES, AND ASKED TO BRING FORWARD ANY RELEVANT INFORMATION." (RCA 13.12, pp. 769-770).

3.3 PSYCHOLOGICAL DISABILITY AS A COMPENSABLE CONDITION AMONG ASBESTOSIS CLAIMANTS

3.3.1 At pp. 732-752 of its report, the RCA offered its analysis of the manner in which the degree (quantum) of impairment/disability among individuals suffering from asbestosis should be determined. One of RCA's notable findings is that psychological as well as physical damage should be recognized when compensating victims of this chronic, irreversible disorder that shortens life expectancy.

3.3.2 For the RCA, an important threshold issue was to ensure that the statutory definition of permanent disability in the Workers' Compensation Act should be such as to encompass psychological disability. In response to RCA's recommendation, the Section of the Workers' Compensation Act covering permanent disability, Section 45, was amended in 1984 to read as follows:

> 45(12). For the purposes of this section, "permanent disability" means any physical or functional abnormality or loss, and any psychological damage arising from such abnormality or loss, after maximal medical rehabilitation has been achieved.

The pertinence of Section 45(12) for claimants suffering from asbestosis was registered recently in Workers' Compensation Appeal Tribunal Decision No. 1027/87 LM. Here the WCAT Panel determined that a plain reading of Section 45(12) permitted it to conclude that the particular worker whose case was under appeal was "entitled to a permanent pension for his psychological disability arising out of his compensable asbestosis."

3.3.3 Given this statutory language, what remains outstanding is Board policy governing the manner in which psychological impairment should be associated with physical impairment for compensation purposes. One alternative would be to assess each claimant's psychological and physical impairment separately. The alternative advocated by the RCA was for the Board to incorporate, for compensation purposes, an automatic allowance for psychological impairment into each claimant's quantum of physical impairment as determined by the physicians on the Board's Advisory Committee on Occupational Chest Disease.

3.3.4 At this time, the Panel has no position on the manner in which psychological impairment should be determined for compensation purposes. RCA's specific recommendation remains of major interest, not only because of its particular approach to the determination of psychological impairment, but because it seeks a reduction in the number of categories to which asbestotic claimants should be assigned with respect to their quantum of physical impairment.

3.3.5 In the circumstances, the Panel considers that the Board should issue a response to this RCA recommendation.

RECOMMENDATION 5: THE WORKERS' COMPENSATION BOARD SHOULD RESPOND TO THE FOLLOWING RECOMMENDATION OF THE ROYAL COMMISSION ON ASBESTOS:

"THE WORKERS' COMPENSATION BOARD, BY DIRECTIVE OF THE CORPORATE BOARD, SHOULD PROMULGATE AS A MATTER OF BOARD POLICY A RULE FOR DETERMINING THE QUANTUM OF COMPENSABLE PHYSICAL AND PSYCHOLOGICAL IMPAIRMENT ARISING FROM ASBESTOSIS IN CLAIMANTS DIAGNOSED BY THE ADVISORY COMMITTEE ON OCCUPATIONAL CHEST DISEASES (ACOCD) AS SUFFERING FROM THIS DISEASE. THE RULE SHOULD INSTRUCT THE ACOCD TO ASSIGN SUCH CLAIMANTS TO ONE OF THREE CLASSES OF PHYSICAL IMPAIRMENT DEFINED BY COMPETENT MEDICAL AUTHORITIES AS CORRESPONDING TO MILD, MODERATE, AND SEVERE RESPIRATORY IMPAIRMENT AND DIRECT THAT THE PERCENTAGES TO BE USED BY THE CLAIMS ADJUDICATION BRANCH FOR CALCULATING AWARDS FOR PHYSICAL AND PSYCHOLOGICAL IMPAIRMENT BE:

(I) WHERE THE ACOCD FINDS MILD PHYSICAL IMPAIRMENT, 30%;
(II) WHERE THE ACOCD FINDS MODERATE PHYSICAL IMPAIRMENT, 60%; AND
(III) WHERE THE ACOCD FINDS SEVERE PHYSICAL IMPAIRMENT, 100%." (RCA 13.1, pp. 750-751).

3.4 ORGANIZATIONAL AND STRUCTURAL REFORMS PERTINENT TO THE PROCESSING OF ASBESTOSIS CLAIMS

3.4.1 The RCA made six formal recommendations with significant implications for the manner in which the Workers' Compensation Board processes asbestosis claims. The Panel's position is simply that it should recommend that the Board respond to these recommendations.

RECOMMENDATION 6: THE WORKERS' COMPENSATION BOARD SHOULD RESPOND TO THE FOLLOWING RECOMMENDATIONS OF THE ROYAL COMMISSION ON ASBESTOS:

1. "THE CORPORATE BOARD SHOULD PROMULGATE A RULE APPLICABLE TO THE PROCEDURAL ADJUDICATION OF ASBESTOSIS CLAIMS WHICH STIPULATES THAT A PHYSICIAN OF THE MEDICAL SERVICES DIVISION IS TO REFER SUCH CLAIMS TO THE ADVISORY COMMITTEE ON OCCUPATIONAL CHEST DISEASES UNLESS, IN THE OPINION OF THE PHYSICIAN SUBJECT TO CHECK BY THE CLAIMS REVIEW BRANCH, THE CLAIM IS DEEMED FRIVOLOUS." (RCA 13.4, pp. 753-754).

2. "THE CORPORATE BOARD SHOULD INCREASE THE MEMBERSHIP OF THE ADVISORY COMMITTEE ON OCCUPATIONAL CHEST DISEASES (ACOCD) TO NOT FEWER THAN TWELVE PHYSICIANS RECOMMENDED BY THE EXECUTIVE DIRECTOR OF THE BOARD'S MEDICAL SERVICES DIVISION AFTER CONSULTATION WITH APPROPRIATE UNIVERSITY AND PROFESSIONAL BODIES, AND IT SHOULD DIRECT THAT THE ACOCD BE ORGANIZED INTO NOT FEWER THAN FOUR SUBCOMMITTEES, EACH COMPOSED OF THREE PHYSICIANS INCLUDING A SUBCOMMITTEE CHAIRMAN DESIGNATED BY THE CORPORATE BOARD." (RCA 13.5, p. 757).

3. "THE CORPORATE BOARD SHOULD ISSUE THE FOLLOWING PROCEDURAL RULES TO CONDUCT THE OPERATION OF THE ADVISORY COMMITTEE ON OCCUPATIONAL CHEST DISEASES:

   (I) EACH SUBCOMMITTEE IS TO HAVE THE AUTHORITY TO DIAGNOSE CLAIMANTS AND ASSIGN CLAIMANTS TO CLASSES OF PHYSICAL IMPAIRMENT.
   (II) THE CLINICAL EXAMINATION OF EVERY CLAIMANT IS TO INVOLVE THE FULL MEMBERSHIP OF THE SUBCOMMITTEE TO WHOM THE CLAIMANT IS ASSIGNED.
   (III) EVERY SUBCOMMITTEE REPORT IS TO BE SIGNED BY THE FULL MEMBERSHIP OF THE SUBCOMMITTEE, WITH ANY DISSENT RECORDED.
   (IV) IN THE EVENT OF SUBCOMMITTEE DISSENT, THE RELEVANT CLAIM IS TO BE REVIEWED BY THE CHAIRMEN OF THE THREE REMAINING SUBCOMMITTEES WHO SHALL THEN MAKE THE FINDING WITH RESPECT TO DIAGNOSIS AND CLASS OF PHYSICAL IMPAIRMENT.

(V) THE ENTIRE MEMBERSHIP OF THE ADVISORY COMMITTEE ON OCCUPATIONAL CHEST DISEASES IS TO REVIEW THE FINDINGS OF ITS SUBCOMMITTEES ON A PERIODIC BASIS." (RCA 13.6, pp. 757-758).

4. "THE CORPORATE BOARD SHOULD ADOPT A RULE WHEREBY PHYSICIANS ENGAGED IN THE WORK OF THE OCCUPATIONAL HEALTH BRANCH OF THE MINISTRY OF LABOUR ARE INELIGIBLE FOR MEMBERSHIP ON THE ADVISORY COMMITTEE ON OCCUPATIONAL CHEST DISEASES AND SHOULD TAKE MEASURES TO ENSURE THAT THE SECRETARIAT OF THIS COMMITTEE IS SUPPLIED SOLELY BY THE WORKERS' COMPENSATION BOARD." (RCA 13.7, p. 759).

5. "THE OCCUPATIONAL HEALTH BRANCH OF THE MINISTRY OF LABOUR AND THE ADVISORY COMMITTEE ON OCCUPATIONAL CHEST DISEASES SHOULD CONTINUE TO SHARE THE SAME X-RAY AND PULMONARY FUNCTION TESTING FACILITIES, WHICH SHOULD BE ACCREDITED BY AN EXPERT TEAM OF RADIOLOGISTS AND RESPIROLOGISTS AT LEAST EVERY FIVE YEARS." (RCA 13.8, p. 759).

APPENDIX A

LETTER OF REFFERAL

FROM THE

WORKERS' COMPENSATION BOARD

(DATED MARCH 5, 1987)

Workers' Compensation Board
Commission des accidents du travail

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INDUSTRIAL DISEASE STANDARDS PANEL
MAR 10 1987
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March 5, 1987

Dr. James Ham, Chairman
Industrial Disease Standards Panel
Ontario Ministry of Labour
10 King Street, East, 7th Floor
TORONTO, Ontario
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Dear Dr. Ham

As you may be aware, the Royal Commission On Matters of Health and Safety Arising From the Use of Asbestos in Ontario completed and tabled its comprehensive three volume report in 1984. Among the report's far-ranging findings and conclusions, are a number of recommendations affecting Workers' Compensation programmes.

The Board, having studied the Commission's recommendations at length and finding itself in accord with most of them, now wishes to proceed with certain initiatives. Towards this end, the WCB requests that the Industrial Disease Standards Panel provide the Board with its advice and recommendations with respect to the following issues.

1. **RCA RECOMMENDATION 12.7 (page 707, Royal Commission Report)**

   "The Worker's Compensation Board, at the earliest opportunity, should advise the Lieutenant Governor in Council to amend Schedule 3 of the Workers' Compensation Act by inserting in the first column (the disease column) the words: 'Asbestosis and Mesothelioma'; and in the second column (the process column) the words: 'Any process involving the use of asbestos'."

   Would it be appropriate to include asbestosis and mesothelioma in either of the disease schedules under the Act?

If so, should the asbestos-related diseases of asbestosis and mesothelioma be scheduled under Schedule 3 or Schedule 4 of the Act?

2. **RCA RECOMMENDATION 12.8 (page 707, Royal Commission Report)**

"The Workers' Compensation Board should review Schedule 3 of the Workers' Compensation Act to ensure that it incorporates those disease (sic) whose associated industrial process is necessary and sufficient to cause this disease."

Following a review of Schedule 3 of the Act, is it the Panel's view that this schedule incorporates all of those diseases whose associated industrial processes are necessary and sufficient to cause those diseases?

If not, what other industrial diseases or associated industrial processes should be incorporated into this schedule, or into Schedule 4?

3. **RCA RECOMMENDATION 12.12 (page 714, Royal Commission Report)**

"The Advisory Council on Industrial Disease Policy* should, as a matter of high priority, transform the current Board guidelines on asbestos-related cancers into eligibility rules in accordance with the process prescribed in this report."

* The Commission anticipated the creation of an investigative body called the Advisory Council on Industrial Disease Policy, which was subsequently legislated into existence as the Industrial Disease Standards Panel.

Is it the Panel's view that the Board's use of guidelines for the adjudication of asbestos-related cancers is an appropriate approach?

If not, should eligibility rules be adopted for this purpose? The Board would request that in the event the Panel accepts the view that eligibility rules are preferrable, that the Panel develop such rules for asbestos-related cancers.

Also, noting recommendation 13.9, does the Panel consider it appropriate to include <u>cor pulmonale</u> in its review of Recommendation 12.12. If so, the Board requests that the Panel develop an eligibility rule to address this.

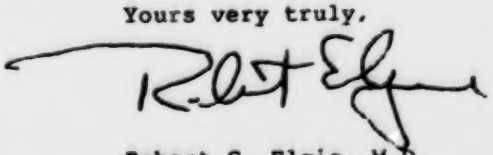
4. **RCA RECOMMENDATION 13.9 (page 764, Royal Commission Report)**

> **"The Workers' Compensation Board, by directive of the Corporate Board, should promulgate an eligibility rule whereby survivors of deceased individuals who were rated by the Board as suffering Mild or Moderate impairment from asbestosis shall be entitled to benefits if death resulted from asbestosis, mesothelioma, lung, laryngeal, or gastro-intestinal cancer, or cor pulmonale."**
>
> The WCB has determined that it should transform into eligibility rules, its current adjudication procedures which deal with entitlement to survivorship benefits in those cases where a worker suffering from mild or moderate asbestosis (but who is not in receipt of a 100% permanent disability pension) subsequently dies of asbestosis, mesothelioma, lung, laryngeal or gastro-intestinal cancer, or cor pulmonale.
>
> The Board would request that the Panel develop such an eligibility rule to indicate under what circumstances survivors will become eligible to these benefits.

As a matter of convenience, copies of Schedule 3 of the Act and the Board's current adjudication guidelines for asbestosis and asbestos-related cancers are enclosed.

The Board is sensitive to the needs of workers who have been affected by workplace exposure to asbestos, and to the needs of their dependants. The W.C.B. wishes to proceed as expeditiously as possible to refine the criteria employed to adjudicate asbestos-related disease claims. I have asked Dr. Elizabeth Kaegi to act as the Board's contact person on this issue, and she will be pleased to discuss these matters with you in greater detail.

Yours very truly,



Robert G. Elgie, M.D.
Chairman

/11

c.c. The Honourable William Wrye
Board of Directors
Alan Wolfson
Dr. E. Kaegi